

9-10-2003 11:43AM

FROM DEVELOPMENT 706 880 5974

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864-987-9686

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### Declaration of Richard L. Kilpatrick

1. I, Richard L. Kilpatrick declare as follows:
2. I hold a Bachelor of Science degree in chemistry from the University of Georgia.
3. For approximately 16 years I have been continuously involved in the development of carpet constructions.
4. I currently hold the position of Director of Development with MILLIKEN & COMPANY, a manufacturer of carpet products and assignee of U.S. Patent Application 09/587,654.
5. I have reviewed the claims of U.S. Patent Application 09/587,654 as well as the Office Action of June 13, 2003 and the patents to Higgins and Porter cited therein.
6. I note that the Office Action draws the conclusion that it would have been obvious to one of skill in the art to utilize a low face weight carpet as taught by Porter in combination with a lightweight cushion within the range taught by Higgins with a reasonable expectation of success. In my opinion, this conclusion is incorrect due to the fact that such a combination was contrary to the accepted wisdom in the art. Specifically, a combination of such low face weight and such a low attached cushion weight would be expected to yield a carpet construction susceptible to localized crushing when used under normal conditions and the lightweight materials would not be expected to have sufficient resilience to recover from such localized crushing. Such a product would thus have been expected to lack a desired appearance due to variations in pile texture. Moreover, in a tile construction, the lightweight materials would have been expected to provide inadequate dimensional stability to prevent edge curl, skew, or other deformation in response to localized crushing at a point within the tile. Such deformation within the tile will cause an undesirable discontinuity across the covered flooring surface.
7. In a cushion-backed carpet, resilience against crushing is provided by both the pile of the primary carpet as well as by the underlying cushion. A heavyweight, thick pile will be expected to provide greater resiliency than a lightweight pile. Likewise, a heavyweight cushion will be expected to provide greater resiliency than a lightweight cushion.
8. Since the overall resiliency of the carpet is a function of both the primary carpet as well as the underlying cushion, it has been generally believed that a reduction in weight of one of these elements should be compensated for by the use of a relatively high weight product in the other layer.
9. When the concept of a low face weight primary carpet having a face weight of less than or equal to about 15 ounces per square yard in combination with a lightweight cushion having a polymer weight of less than about 20 ounces per

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square yard was first proposed, I viewed the concept with substantial skepticism. In particular, it was my belief that a carpet incorporating such a combination would be unsuitable due to localized crushing when used. It was my belief that either a higher weight cushion or a higher face weight primary carpet would be required to provide a desired degree of resilience to the carpet such that crushing and resulting appearance of discontinuity across the surface would not occur.

10. In light of the accepted wisdom that an undesirable level of crush would occur if both pile weight and cushion weight were substantially reduced, it was surprising that constructions utilizing such lightweight materials at both locations could be produced which would be suitable for rigorous use environments as reflected by the applicable Gmax, resiliency rating and Hexapod pile height retention measurements.

*I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, and that such willful false statements may jeopardize the validity of the current application or any patent issued thereon.*

Respectfully submitted,

*Richard L. Kilpatrick*

Richard L. Kilpatrick

Date: Sept. 10, 2003

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